

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

**MEMORANDUM OM 10-47(CH)**

**March 26, 2010**

TO: All Regional Directors, Officers in Charge,  
and Resident Officers,

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Case Handling Instructions for All Cases under Coordination by the  
Division of Operations Management or a Regional Office

This memorandum sets forth instructions for cases currently under coordination by the Division of Operations Management or a Regional Office. Attached, as an Appendix, is a concise list of coordinated cases to detach and use as an easy reference guide.

**I. Avis/Budget**

Recently, several charges arising out of the merger of Avis and Budget were filed in West Coast regional offices. This merge affects facilities all over the country, but so far has only resulted in a few charges. Region 32, Oakland Regional Office, has agreed to be the "clearing house" for cases arising out of this merger. If charges and/or petitions involving this merger have been filed in your office, please fax a copy of those charges and/or petitions to Director Alan Reichard, Region 32, and Assistant General Counsel Joseph Frankl, Division of Operations-Management. Upon completion of a ULP investigation, please forward your FIR/Agenda Minute, including the Region's recommended determination, to Regional Director Reichard for review. Regions should not proceed to implement decisions or approve settlements or withdrawals until clearance is obtained from Region 32.

If you have any questions, please contact AGC Frankl.

**II. "Bannering" Cases**

Pursuant to OM 06-42, Regions should submit to the Division of Advice all cases involving union "bannering" or the display of an inflated rat (or other animal) to assure consistency nationwide. The Regions may submit either a traditional Advice submission and enclose the Regional Office File or a short recommendation memorandum together with the Regional Office decisional documents (FIR, Agenda Minute or Outline) and copies of photographs and maps showing the alleged unlawful conduct. Any questions about these cases should be referred to the Division of Advice.

### **III. Beck Cases**

A. The General Counsel has decided to present to the Board the question whether a union violates Section 8(b)(1)(A) by requiring objecting nonmembers to annually renew their objections. This matter is presently being litigated in several cases. Until these cases are decided, Regions should contact Assistant General Counsel Nelson Levin if they have a meritorious annual objections issue.

B. The General Counsel has decided to present to the Board the question of whether a union violates the Act because its initial Beck notice did not include the full amount of dues and the percentage reduction that objecting members would receive. This issue is presently being litigated in *UFCW Local 700 (Kroger)*, Case 25-CB-8896. The Regions are requested to advise AGC Levin of any charges that are filed which address this issue.

### **IV. CenturyLink**

Five regional offices currently are investigating unfair labor practice charges against CenturyLink. These charges, filed in Regions 11, 26, 28, 30, and SR33, allege violations of Section 8(a)(1) and (5) by making unilateral changes in health care coverage and failing to provide information.

Region 11 has been designated as the coordinating Region for these charges. If such a charge has been or is filed in your Region, please scan and send a copy to both Region 11 Director Willie Clark and Deputy Assistant General Counsel Dottie Wilson in the Division of Operations-Management.

Each Region should complete the investigation of its charge(s). After completing the investigation, the Region should send copies of its agenda minutes and/or FIRs to Region 11. Regions should not implement decisions or approve settlements or withdrawals until receiving clearance from Region 11. Region 11 will monitor any merit cases, and, if necessary, we will make a decision regarding consolidating the cases for settlement or trial.

Please contact DAGC Wilson if you have any questions about coordination of these cases.

### **V. First Student**

Charges have been filed in several Regional Offices alleging that First Student violated Section 8(a)(1) and (5) by distributing a new employee handbook and by requiring employees to sign that they have received the handbook. While those charges have been largely settled and/or have been deferred, a number of charges continue to be filed in which the unions allege that adverse actions such as discharge have taken place as a result of First Student's reliance on some of the terms of the unilaterally implemented handbook. The most common situations appear to involve rear end collisions, criminal background checks and a requirement that drivers pass a physical dexterity/agility test. Since these charges appear to

raise common issues and may be impacted by a global settlement reached in the earlier cases, the Pittsburgh Regional Office (Region 6) will be coordinating the investigation of these charges. If such a charge has been filed in your Region, please fax a copy to both Regional Director Robert Chester and Assistant General Counsel Nelson Levin.

Each Region should investigate the allegations, whether or not alleged changes have resulted in disciplinary action or other consequences. After completion of the investigation, copies of the agenda minute and/or FIR should be transmitted to Region 6. Regions should not proceed to implement decisions or approve settlements or withdrawal requests until clearance is received from Region 6. For any charges or allegations found not to be meritorious, after receiving clearance from Region 6, each Region will issue dismissal or partial dismissal letters or approve any requests to withdraw charges or allegations of charges set for dismissal. The merit cases will be monitored by Region 6 and, if necessary, a decision will be made regarding consolidating the cases for trial.

## **VI. Regis Corp.**

Four Regional offices currently are investigating unfair labor practice charges against Regis Corp. These charges, filed by individuals in Regions 3, 12, 18 and 25, center upon documents and DVDs entitled "Protection of Secret Vote Agreement" that the employer distributed to employees and managers. Deputy AGC Joseph Baniszewski in the Division of Operations-Management attached the document to his e-mails to all Regional Directors dated January 5, and February 17, 2010.

Because Regis Corp. is headquartered in Minneapolis, Minnesota, and as these charges raise common issues based upon the same or similar language in the "Protection of Secret Vote Agreement" documents, we have designated Region 18 as the coordinating Region for these investigations. If such a charge has been or is filed in your Region, please scan and send a copy to both Region 18 Director Marlin Osthus and DAGC Joseph Baniszewski.

Please note that Regis Corp. operates more than 9,500 corporate and franchise locations in North America under a variety of names, such as Supercuts, Sassoon Salon, Regis Salons, Mia and Maxx, MasterCuts, SmartStyle, Hair Club for Men and Women and Cost Cutters Hair Salon. Some businesses are located within Wal-Mart stores. Please assess any charges pending or that may be filed in your Regions involving businesses such as hair stylists, hair salons, barbershops and similar entities to determine if the employer is affiliated with Regis Corp., and if the charge involves a document such as the "Protection of Secret Vote Agreement." Additional information concerning Regis Corp., including recent SEC filings and annual reports, is available at its website: <http://www.regiscorp.com/investor/irhome.cfm>

Each Region should complete the investigation of its charges. After completing the investigation, send copies of the agenda minutes and/or FIRs to Region 18. Region 18 expects to submit these cases to the Division of Advice. Regions should not implement decisions or approve settlements or withdrawals until receiving clearance

from Region 18. Region 18 will monitor any merit cases, and, if necessary, a decision will be announced regarding consolidating the cases for settlement or trial.

Please contact DAGC Baniszewski if you have any question about coordination of these cases.

## **VII. Saint Gobain Cases**

In *Saint Gobain Abrasives Inc.*, 342 NLRB No. 39 (July 8, 2004), the Board reversed a Regional Director's administrative dismissal of a decertification petition, reinstated the petition and remanded it to the Regional Director for a hearing on whether there was a causal relationship between the allegedly unlawful conduct and the disaffection manifested by the employees in the decertification petition. *Saint Gobain* does not involve the situation where a Regional Director determines that a decertification petition should be "blocked" by the pendency of an unfair labor practice charge. Rather, *Saint Gobain* is implicated only when the Regional Director finds merit to a blocking charge and a disaffection issue arises regarding the petition (CHM Section 11730.3(c)). See OM 05-20, "Casehandling Guidance under *Saint Gobain Abrasives, Inc.*, 342 NLRB No. 39 (July 8, 2004)," dated December 9, 2004. The Board's unpublished decision in *Tecumseh Packing Solutions, Inc.*, 7-RD-3544 (January 25, 2007) provides additional insight into the Board's approach to these cases. See Associate General Counsel Richard Siegel's email communication dated February 20, 2007.

If a Region is handling a petition which raises *Saint Gobain* issues, the Regional Director should contact his/her Assistant General Counsel in Division of Operations-Management and the Office of Representation Appeals in order to discuss the Region's plan for processing the case.

## **VIII. Shaw's Supermarkets Cases**

In *Shaw's Supermarkets*, 343 NLRB No. 105 (December 8, 2004), the Board reversed a Regional Director's administrative dismissal of an RM petition based on the Union's demand for recognition based on a contractual "after acquired" or "additional stores" clause, reinstated the petition and remanded the case to the Regional Director for a hearing on whether the employer clearly and unmistakably waived the right to a Board election and if so, whether public policy reasons outweigh the Employer's private agreement not to have a Board conducted election. This case is now closed, however, if a Region is handling an RM petition which raises Shaw's Supermarkets issues, the Regional Director should contact his/her Assistant General Counsel or Deputy in Operations-Management in order to discuss the Region's plans for processing this matter.

## **IX. SWU**

A number of charges have been filed in Regions across the country against Service Workers United (SWU) alleging that the Union violated Section 8(b)(1)(A) and (2) of the Act by causing various employers to deduct and remit dues from paychecks pursuant to a dual-purpose check-off card that is the sole means by which an employee may obtain

union membership under the union-security clause in the collective-bargaining agreements between the employers and the Union. English and Spanish versions of the dual-purpose check-off card that is under challenge in these charges were attached to Deputy Assistant General Counsel Charles Posner's e-mail sent on December 8, 2009.

Since these charges appear to raise the same issue based on the language in the dual-purpose check-off card, it is appropriate to coordinate the investigation of these charges. A number of these charges have been filed in Region 21 and that office will be coordinating the investigation of these charges. If such a charge has been filed in your Region, please fax or send a scanned copy of the charge to Regional Director Jim Small, Region 21, and DAGC Posner.

Each Region should complete the investigation of its charges or allegations. After the completion of the investigation, copies of the agenda minutes and/or FIR should be faxed to Region 21. Regions should not proceed to implement decisions or approve settlements or withdrawals until clearance is received from Region 21. For any charges or allegations found not to be meritorious, after receiving clearance from Region 21, each Region will issue dismissal or partial dismissal letters or approve any requests to withdraw charges or allegations of charges set for dismissal. The merit cases will be monitored by Region 21 and, if necessary, a decision will be made regarding the consolidating the cases for trial.

It is recognized that these charges may present a factual and/or legal issue that obviates the need for repeated investigations. After more information is obtained about these charges a determination will be made about whether to update or modify this coordination instruction.

Any question about coordination of these cases should be referred to DAGC Posner.

#### **X. UNITE!HERE**

Charges have been filed in several Regional Offices raising issues involving the UNITE/HERE schism. Since these charges appear to raise common issues, Deputy Assistant General Counsel Charles Posner will be coordinating the investigation of these charges. If such a charge is or has been filed in your Region, please email a copy to DAGC Posner. If R case petitions are filed, please also contact Lafe Solomon, Director, Office of Representation Case Appeals. Unfair labor practice charges should be fully investigated. Each Region should complete the investigation of its charges or allegations. After the completion of the investigation, copies of the agenda minutes and/or FIRs should be sent to DAGC Posner. Regions should not proceed to implement decisions or approve settlements or withdrawals until clearance is received from DAGC Posner.

Each Region is to ask the parties in every pending and future ULP or R case involving the UNITE HERE dispute whether there is any litigation in state or federal court (other than *Gillis v. Wilhelm*, (SDNY Case No. 09-01116, filed 2/6/09)) involving the same or related issues as those raised in the charges and/or petitions pending before the NLRB. Also, the Regions should instruct parties to inform the Region about any such collateral litigation that may arise in the future. The Region

should promptly contact the Special Litigation Branch once it learns of any such collateral litigation.

Any questions about the coordination of these cases should be referred to DAGC Posner.

#### **XI. USPS Refusal-to-Provide-Information Cases**

A. OM 03-18, dated November 6, 2002, announced new guidelines for handling refusal-to-provide-information charges against the USPS filed by all postal service unions. As set forth in the OM, if a Region concludes that departure from these guidelines is warranted because of special circumstances, it should first consult with Director Frederick Calatrello, Region 8, prior to taking any action. It has come to our attention that recently some USPS officials and/or USPS attorneys have advanced the proposition that the 14 calendar day commitment discussed in the OM at (1) on p.3 provides an absolute “safe harbor”. In other words, they contend that so long as the USPS provides the requested information within 14 calendar days of the charge being filed the Region should process an adjusted w/d. This proposition ignores an important caveat explicitly set out by the guideline: “... the Regions should accept adjusted withdrawals unless the Region sees a pattern of postponing compliance with the Act until unfair labor practice charges are filed.” This is exactly the situation which recently has come up, i.e. the particular PO facility repeatedly ignores information requests until a ulp charge is filed and only then provides the requested information within the 14 calendar day guideline. In such instances an adjusted w/d should not be routinely processed. Assistant General Counsel Nelson Levin will address any questions concerning these coordination efforts.

B. Region 8 will continue to coordinate and monitor processing of these cases. Region 8 will also consider whether consolidation or clustering of cases for trial or seeking remedial relief on a wider basis is appropriate. In order to maintain oversight of these cases, each Region should send Region 8 copies of dispositions (withdrawal approval letters, settlement agreements, draft complaints, and ALJDs) in all refusal-to-provide-information cases filed against the USPS.

C. Regions are to contact Contempt Litigation and Compliance Branch Assistant General Counsel Stanley Zirkin or Deputy Assistant General Counsel Ken Shapiro before accepting adjusted withdrawals in these cases. In addition, prior to taking any final action on cases involving the violation of any provision(s) of outstanding court judgments regarding the USPS’s refusal to provide information, Regions are to contact Contempt Litigation and Compliance Branch (“CLCB”). Revised OM 03-18, Attachment lists the current outstanding court orders involving refusal-to-provide-information violations.

#### **XII. USPS Weingarten Violations and Charges Alleging Conduct Covered By Outstanding Judgments**

OM 03-18 also requires Regional offices to notify CLCB of the filing of any charges alleging violations of the provisions of any outstanding court judgment(s) against the

USPS (See attachment 4 to OM 03-18). In particular, there is an outstanding court judgment involving a nationwide cease and desist order regarding Weingarten violations. For any charge which alleges such conduct by the USPS, Regions should complete the investigation and determine the merits of the charges. If the Region finds merits to the alleged violations, prior to taking any final action, the Regions should submit the case to CLCB to determine whether contempt proceedings are appropriate. Regional submissions should include a summary of the results of the investigation, the Region's analysis of the merits, and a recommendation as to whether the initiation of contempt proceedings would be appropriate.

In addition, pursuant to the Joint Settlement Stipulation ("Stipulation") with the Contempt Litigation & Compliance Branch to resolve alleged Weingarten violations that have arisen and may arise in the future at Postal Service facilities throughout the country, Regions should establish a tickler system in these cases, based on the timeline set forth in the Stipulation, to remind Board agents to contact the parties, and to determine whether charges have prima facie merit.

In order for CLCB to track and assess the effectiveness of the Stipulation, the Regions should continue to enter information in the matrix report in each Region's eRoom. (See OM 08-43(CH) (Revised) and Attachment A). On February 9, 2009, OM 09-33(CH) issued to inform the Regions that the six-month pilot alternative dispute resolution ("ADR") program which was to expire on September 5, 2008, was extended indefinitely by mutual agreement.

In addition, the OM outlined the seven clarifications and added safeguards that were incorporated in the Amended Joint Settlement Stipulation and included suggested language for prima facie letters issued by the Regions. (See OM 09-33(CH)).

All questions concerning possible contempt action against the USPS or operation of the Stipulation should be directed to Assistant General Counsel Stanley Zirkin or Deputy Assistant General Counsel Kenneth Shapiro. Updated information concerning any subsequent judgments entered against the USPS can be obtained by utilizing the Appellate Court Case Lookup System. See OM 03-04, dated October 18, 2002.

/s/  
R. A. S.

Attachment  
cc: NLRBU  
Release to the Public

**MEMORANDUM OM 10-47(CH)**

## APPENDIX

### CASE NAME

**Avis/Budget**

**“Bannering” Cases**

**Beck Cases**

**CenturyLink**

**First Student**

**Regis Corp.**

**Saint Gobain Cases**

**Shaw’s Supermarkets**

**SWU**

**UNITE!HERE**

**USPS – Refusal to provide  
information cases**

**USPS – Weingarten violations**

### LEAD OFFICE

Region 32 and DAGC Frankl

Division of Advice

AGC Levin

Region 11 and DAGC Wilson

Region 6 and AGC Levin

DAGC Baniszewski

Operations-Management

Operations-Management

Region 21 and DAGC Posner

DAGC Posner

Region 8 and AGC Levin and

Contempt Litigation & Compliance

Contempt Litigation & Compliance